Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1975

No. 74-1628

APPLICATION OF BERNARD J. KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE TAXES REMAIN DUE AND UNPAID FOR THE YEARS 1971 AND 1972 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEARS 1971 AND 1972,

Appellee,

vs.

JOHN A. HUTTER,

Appellant.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS

OPPOSITION TO MOTION TO DISMISS

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KORZEN v HUTTER No. 74-1628
OPPOSITION TO MOTION TO DISMISS
ARGUMENT
I
(a)

This is the third time appellant Hutter has asked this Court to protect his right to due process under Amendment 14 and make a definitive final determination whether the statutes and provisions of the State of Illinois Constitution outlined, are repugnant to the Constitution of the United States.

In one Case No. 71-1419 this Court denied the appeal because delay in mail, and the serious illness of Mrs. Hutter, (who later died as a result) caused by the harassment of the City of Chicago resulted in the appeal brief reaching the Court a few days late (the clerk was called and told before expiration of filing date). Justice Douglass dissented.

In the other Case No. 72-1114, the Court Clerk pleaded with the States Attorney to file a motion to dismiss indicating in effect that the Court could then dismiss the appeal and not have to make a decision on the constitutionality of the State Statute.

The States Attorney complied claiming that Hutter had not appeared before the County Board of Appeals (the Board members told Hutter not to make an appeal during the 4 years of the quadrennial assessment for they would make no changes in the interim) Hutter complied. The Court dismissed the appeal.

This Court erred in doing this on Page 6 of Motion to Dismiss appellee states: "assuming at this point that the taxpayer fails to avail himself of his right to a hearing . . . he pays under protest the assessed tax when it later comes due and initiates his day in court".

Therefore this Court ignored the only question involved namely: Must the tax be paid in full under protest before a taxpayer, Hutter, may have due process and a day in court?

In both of above cases Hutter had petitioned the Supreme Court of Illinois for leave to appeal. Each time the leave was denied (see above appeals) (the case numbers may be out of order).

In a petition for a writ of certiorari in No. 72477 Hutter asked the writ to be directed to the Supreme Court of Illinois, which denied the leave to appeal. Your clerk criticized Hutter and said it must be directed against the court that made the final decision (the Appellate Court). Hutter complied with the clerk and filed a new corrected petition. So here Hutter applied the same procedure to comply.

The Supreme Court of Illinois and all lower courts have made it very clear that they believe the Statute and Provision of the Illinois Constitution are not repugnant to the U.S. Constitution. Hutter claims they are, he pleads with this Court to decide.

II

(a)

The appellee's claim of analogy between the Illinois Statute and Phillips v Commissioner seems absurd. The taxpayer assessed himself when he made out his return. If the Commissioner thinks he was too lenient with himself he can assess an additional tax, but then the taxpayer can go to the tax court and up to this Court for a just determination. In Illinois the taxpayer has no hope of court justice unless he pays a discriminatory, confiscatory, arbitrary, punitive tax first, which Hutter was unable to do.

The cases cited by the appellee are not applicable here.

On Page 7 the motion states: "a compelling state interest is being served by the condition precedent here imposed". What compelling state interest? Hutter is also a taxpayer in Wisconsin. In both states the taxpayer may elect not to pay the taxes assessed. In the same period of time, about two years, the taxpayer may lose his property to the tax purchaser.

In Wisconsin the state finds no "compelling state interest". The taxpayer may carry his appeal up to the Wisconsin Supreme Court. This Court **must** hear all appeals – no "leave to appeal" necessary. The Court can't say "go away and don't bother us" like the Illinois Supreme Court can.

Also on Page 7, "This Court has long recognized that the state legislatures have the power to place such conditions upon access to the state courts when a compelling state interest is involved and the **condition is a reasonable one**". Wisconsin does not find it reasonable nor necessary.

(b)

Hutter and other owners of small apartment buildings are compelled to assume the tax burden of still smaller apartment owners and those who own private homes. This is plainly "insidious discrimination" and denies equal protection of the law.

On Page 9 – "The Illinois Supreme Court has considered . . . total reliance was placed on constitutional standards enumerated by this Court".

Continued Argument

For all practical purposes politically, the City of Chicago and Cook County are a single unit.

Woe to anyone who would seek the protection of the U.S. Constitution from this combine.

Hutter has done just this and the wrath of the local government has fallen upon him. He is now 76 years old. He is trying to determine whether there is any possibility that the Supreme Court will protect the constitutional rights of the slight majority who support the rest of the population. Hutter is a "Wasp" whose parents were born in the United States. There are other ethnic groups who compose the hard working producers and own small property to try and remain self sustaining as Hutter. Without private property there can be no freedom.

Local governments (by no means limited to Chicago and Cook County) act with all the surly despotism of a local Soviet commissar.

This local government has given Hutter the well known "one-two". See City v Hutter – 72447, also see Hutter v Irving Faber et al U.S. District Court for Northern District of Illinois Eastern Division No. 75-C2231, a Civil Rights conspiracy action where the receivers attorney et al acted to **prevent** the court order from being enforced.

Our bicentennial is as hand. How long will our republic survive if the public loses faith in the Constitution and this Court? The Constitution must protect everyone or it will protect no one. At the present rate how long will it be before we have a dictatorship of the right?

The Court complains of a heavy case load. Would not that case load be reduced by making a decisive finding wherever possible, rather than seeking a way to avoiding the decision in this appeal. Must Hutter start all over again for the fourth time?

Conclusion

Hutter sincerely pleads that the Court may grant him justice.

(Note this opposition delayed. Did not reach Hutter until August 18. Mail in Chicago robbed again, checks forged and cashed.)

Respectfully Submitted,

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